

CITY OF NORTH ADAMS
City Clerk's Office
August 5, 2015

I hereby notify that at twelve noon today the following items of business have been filed with this office and will be acted upon at the meeting in the City Council Chambers at City Hall, Tuesday evening August 11, 2015 at seven-thirty o'clock according to Section 8, Rules and Orders of the City Council.

Marilyn Gomeau
City Clerk

REGULAR MEETING OF THE CITY COUNCIL
August 11, 2015

Roll Call
Moment of silent prayer
The Pledge
Approval of the minutes of *July 28, 2015*

PUBLIC HEARING

O'Connell Oil to install a new diesel tank at 458 Curran Highway.

CLOSE PUBLIC HEARING

Application granting permission to O'Connell Oil to install a new diesel tank at 458 Curran Highway.

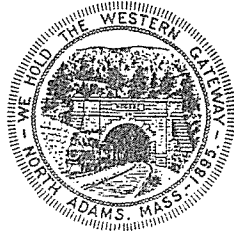
- 11,439** *Communication submitted by Councilor Wilkinson regarding a new Zoning Ordinance allowing homeowners in a nonconforming lot the ability to rebuild their home, which was postponed at the meeting of July 14th.*
- 11,451** *Communication submitted by Councilor Buddington regarding the discussion of an Open Checkbook System, which was referred to the Public Service Committee and postponed at the meeting of April 14, 2015.*
- 11,463-1** *An Ordinance amending Chapter 13, entitled Motor Vehicles and Traffic, Section 13-26.1 entitled School Zones, which was referred to the Public Safety Committee at the meeting of July 14th, which was postponed at the meeting of July 29th.*
- 11,465-1** *Mayor's communication #27-A requesting authorization to borrow the sum of \$160,000.00.*
- 11,465-1** *An Order authorizing the Treasurer, with the approval of the Mayor, to borrow the sum of \$160,000.00 under the provisions of Section 20 of Chapter 121B of the Massachusetts General Laws or any other enabling authority.*
- 11,466** *Report of the General Government Committee meeting held July 21st submitted by Councilor Merrigan.*

CORRESPONDENCE

LICENSE

OPEN FORUM

COUNCILOR & MAYOR'S CONCERNS



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor
Richard J. Alcombright

August 11, 2015

#27-A

To: North Adams City Council
Re: Freight Yard Pub settlement

Dear Honorable Councilors:

The events that gave rise to the settlement we will be discussing tonight occurred in the year 2008, two years before I took office. The gist of the court action was that the North Adams Redevelopment Authority (NARA) breached its lease and acted in bad faith toward the Freight Yard Pub (FYP) in its handling of parking at the Heritage Park during the reconstruction of the Hadley overpass.

The NARA vigorously defended the lawsuit, including filing a countersuit to recover back rent, and fortunately for the NARA the Insurer assumed the costs of the litigation. Former Mayor Barrett, who was in office at the time of these events, cooperated fully in the defense of the lawsuit and testified before the jury in the Berkshire Superior Court. We presented a strong defense to the merits of their claims. The Jury however did not agree with us on all counts. They found that the NARA did not breach the lease and awarded us back rent, however, the jury determined there was a "breach of the implied covenant of good faith and fair dealing". They awarded damages to the Freight Yard Pub in the amount of \$300,000, with interest accruing at the rate of 12%.

NARA has now exhausted every appeal, and has reached a settlement that I believe is in the best interests of the NARA and the City. The settlement is in the amount of \$287,574.89. It minimizes the interest that will continue to accrue, requires that a full year's rent be escrowed by the Freight Yard Pub to insure the immediate and uninterrupted payment of future rent, and preserves and protects the financial stability of the NARA and the City of North Adams.

On Wednesday, June 8th, the NARA met in executive session to discuss the proposed settlement. After discussion and after moving back into open session, they voted unanimously to approve the following motion: "To approve a settlement of all pending litigation with Baystate Hospitality Group, Inc. in the gross amount of \$287,574.89 provided that the sum of \$42,416.62 is placed in escrow to secure payment of 1 years rent, and: To authorize the Chair to execute any documents in furtherance of the settlement agreement.

The NARA has approximately \$167,000.00 in cash accounts, which is insufficient to satisfy the court judgment. While we will continue to move toward privatization of the Heritage Park, the NARA will need minimum operating funds to sustain its operations in addition to the anticipated rent it will receive from the Freight Yard

Pub for the next year. I have therefore proposed that the NARA pay the sum of \$130,000 toward the judgment. To complete the settlement, the order before you authorizes me to borrow an amount not to exceed \$160,000.

The primary obligation for this judgment belongs to NARA but the City bears ultimate responsibility for the actions of its officials and its financial well being. An outstanding judgment against its most important development agency, and the collection processes that would entail, are not acceptable if we are to continue to move forward and grow our economy. While I have said in the past that I would not use City funds to satisfy this judgment, it has become clear that the NARA has insufficient resources to pay the full amount and that the overall fiscal responsibility of the city requires that it be paid. That said, we will take every step to reimburse the city's share from the NARA when and if it has the resources. I have been advised by the City Solicitor that payment by the City is proper and appropriate.

Speaking with the Department of Revenue, under Massachusetts General Law, we are able to borrow for this purpose but not for a term to exceed one year. My hope is that this order will be approved, that with the borrowing and the NARA money I can settle this obligation. Beyond that, I would ask that after the borrowing and settlement are complete, that I meet with FINCOM to discuss our options. In doing that, we will look at several things to include:

1. The appropriate term of the borrowing hopefully not to exceed 5 years.
2. Waiting to see if NARA receives proceeds from the sale or lease of the park and utilizing those proceeds towards the debt.

Right now, I am simply asking for authorization to borrow.....we will have a year to sort out the final terms of repayment.

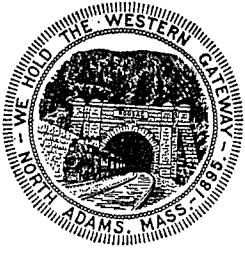
As a City, we are moving in the right direction. This situation has been going on since my first month in office and very simplistically....it is time to resolve it. My administration did not create the matters that gave rise to this court case, but a fiscally sound and responsible City must pay its obligations – and certainly court judgments, whenever and however they may have been incurred.

I respectfully request adoption of the borrowing order as presented.

Sincerely,



Richard J. Alcombright
Mayor



City of North Adams

In City Council

.....August 11, 2015.....

— Ordered: —

ORDERED: That the sum of ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000) be, and hereby is, appropriated to defray certain development and operating costs associated with the Western Gateway Urban Heritage Park urban renewal project within the City of North Adams undertaken by the North Adams Redevelopment Authority pursuant to the authority duly vested therewith.

AND BE IT FURTHER ORDERED: That to meet said appropriation, the Treasurer, with the approval of the Mayor, is authorized to borrow ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000) under the provisions of Section 20 of Chapter 121B of the Massachusetts General Laws or any other enabling authority.

AND BE IT FURTHER ORDERED: That the City Treasurer is authorized to file an application with the appropriate officials of the Commonwealth of Massachusetts (the "Commonwealth") to qualify under Chapter 44A of the General Laws any and all bonds of the City to be issued pursuant to this order, and to provide such information and execute such documents as such officials of the Commonwealth may require.